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EXAMINER

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ART UNIT PAPER NUMBER

3618

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/472,134

Applicant(s)
Girouard et al.

Examiner
Anne Marie Boehler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on September 24 and October 26, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49, 55, 57-61, 64-68, 73, and 76-84 is/are pending in the application:
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration:
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49, 55, 57-61, 64-68, 73, and 76-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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1. Proposed drawing changes have been approved, however, even as amended, the drawings do not show the handlebars in a position which would allow any substantial amount of movement, as would be required to steer the vehicle.

2. Claims 1-49, 55, 57-61, 64-68, 73, 76-84 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant fails to show an operative embodiment of the invention. The only drawings of applicant's invention are Figures 2 and 3, which show the snowmobile with a rider in the prior art position and in the position he would assume if riding on applicant's snowmobile. The difference between the two snowmobiles (the prior art one and that of applicant) is the position of the handlebars. However, the positioning of the handlebar in Figures 2 and 3 would not allow any significant steering of the vehicle. Therefore, applicant's invention, as disclosed, is inoperative.

3. Claims 1-49, 55, 57, 58, 61, 64-68, 73, and 76-84 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant improperly defines his invention with respect to a rider's body. In many of the claims (for example, claims 1-39 and 61), applicant defines the invention with respect to the rider's center of gravity. However, the rider himself (and his body parts and center of gravity) are not statutory subject matter that may define a patentable claim. Also, every rider is different, even

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if he were to generally conform to the dimensions of a standard rider provided by applicant, so it would be impossible to determine the scope of the claim based on a rider.

Applicant uses terms such as "seat position", "steering position", and "footrest position" which are improperly defined in relation to the human body as well. For example, applicant explains, on page 9, line 9-15, that "the rider will be positioned on seat 128 so that he occupies seat position 130". The seat has a longitudinally elongated support surface, as seen in the drawings (fig. 2, for example) which could define a number of seat positions. Therefore, applicant has defined his "seat position" based on a "standard person" sitting a few seconds after starting the vehicle, heading straight ahead on flat terrain. The actual "seat position" is defined by a line from the rider's shoulder to hip at its intersection point with the seat while the rider is compressing the cushioning of the seat. Therefore, the "seat position" is defined by the user, his weight and measurements at any given time, and where he chooses to position his body while riding the vehicle. This improperly incorporates the user into the claimed combination and is impermissible.

In claim 58, applicant claims to user's head position which, again, is an improper recitation of the rider.

4. Claims 1-49, 55, 57, 58, 61, 64-68, 73 and 76-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In each of the claims applicant recites a "standard rider" and a "standard position".

However, it is believed that a rider, a human being, cannot be standardized. Also, although applicant has described many dimensions of what he believes to be a standard rider, not every parameter for defining a standard rider is described. For example, applicant has failed to specify the weight of the rider, even though the position of center of gravity of the rider is being claimed. It is not clear how the rider's weight is distributed on his body and how his posture figures into his definition is not clear, etc.

Even if the dimensions of a standard rider were definable, the position a rider on the cycle is dependent on more than simply the dimensions of the rider. The stiffness of the joints, the comfortable posture and the simple preference of the rider factor into their positioning on the cycle. Therefore, applicant's recitation of the vehicle based on the position of the standard rider is believed to be indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 40, 41, 45-49, 76, and 81-84 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Yasui.

Yasui shows a snowmobile with a seat position, footrest position and steering position that are illustrated by a rider shown in phantom in Figure 1. In the drawing, the angles shown

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appear to correspond to those being claimed, given a rider in the position shown. Sideboards are shown from the side in fig. 1 and in top view on fig. 3. They appear to have a 5 degree downward slope to the front and a wall that inclines upwardly to form a toe-hold, as broadly recited and disclosed. However, it is not clear if Yasui anticipates the claimed invention because of the claims are believed to be indefinite and, therefore, the scope of the claims is unclear.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasui.

The rider position shown appears to demonstrate angles of α being about 98 degrees, β being about 44 degrees and γ being about 37 degrees. However, the angles are directly related to the exact positioning of the rider. The seat and footboards allow for a variety of positions, depending on the comfort and dimensions of the rider. Therefore, it would have been obvious for a rider who is taller than the rider shown to sit farther back on the seat, thereby altering the seat and footrest positions so they correspond to those claimed.

9. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marier.

Marier shows a snowmobile with a frame, an engine 17, skis 22, and a steering shaft 104 connected to a ski 22. A line between the seat position (at the upper portion of the seat that makes contact with the rider) and the steering member intersects a line between the seat position

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and the top of windshield 25 at an angle of approximately 10 degrees. It would have been obvious to a skilled artisan to raise the upper edge of the windshield a small amount, so that the angle is at between 10 and 20 degrees, in order to provide greater protection for the rider without changing any other function of the snowmobile.

10. Claims 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preble.

Preble shows a vehicle with a seat 34, an engine 18, a handlebar 24, and a track 14 having a forwardmost drive axle at 16. The engine is forward of the seat. The forwardmost drive axle is also toward the front of the vehicle. Preble fails to specify the exact location of the center of gravity of the vehicle, with or without a rider positioned thereon, however, the bulk of the vehicle is positioned rearwardly of the drive axle (the engine and steering linkage weight is positioned just forward of the drive axle, but the entire track and seat structure and the majority of the frame are positioned significantly rearward of the axle). Therefore, it would have been obvious to a skilled artisan to position the forwardmost drive axle of Preble forward of the center of gravity of the vehicle, in order to provide an adequate track, seat and frame structure.

11. Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trautwein (USPN 3,583,507).

Trautwein shows a snowmobile, in Figures 1-4, having a pair of forward skis 5, a rearward track 1, an engine positioned in front of the seat 3 for driving the track, 3 and generally horizontal sideboards 10. The embodiment of Figures 1-4 does not depict toe holds. However, in Figure 7, sides of the sideboards extend upwardly from the foot rest portion at the side and in front of and

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above the toes of the forward rider. It would have been obvious to a skilled artisan to provide the snowmobile of the embodiment of Figure 4 with toe holds, as shown in Figure 7, in order to help hold the forward rider's feet in position. It would also have been obvious to a skilled artisan to angle the footboards forward or rearward slightly, in order to accommodate a rider not sitting perfectly straight. Absent any showing the criticality, the exact angle selected is a matter of design choice, depending on the desired effect.

12. Applicant's arguments filed September 24, 2001 and October 26, 2001 have been fully considered but they are not persuasive.

Applicant argues in his remarks of October 26, 2001, that a rider is clearly not being claimed. He asserts that the claim merely recites structure, including a seat, footrests, and steering device, which are configured to support a "standard load" in a "standard position" on the vehicle. The examiner disagrees that applicant has clearly claimed structure, absent any recitation of a rider. An understanding of the claimed invention, particularly the positions of the first and second centers of gravity, requires a reading of applicant's detailed disclosure, otherwise the terms "standard load" and "standard position" have no meaning. However, applicant's disclosure defines the terms "standard position" and "standard load" based on a rider and the position a human rider assumes when he positions himself on the vehicle. Therefore, since the rider is a required element in the definition of the claim terms ("standard load", "standard position" and "second center of gravity"), applicant is impermissibly claiming the rider. Conversely, if a rider were not taken into account, then the recitation of the distance between the center of gravity

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with and without the load (as recited in claim 84) would not distinguish over the prior art because an unspecified "load" could be positioned on any snowmobile at or near the center of gravity of the snowmobile so that the second center of gravity, of the vehicle with the load, does not move away from the first center of gravity significantly.

Applicant argues that the change to Figure 4 obviates the rejection based on 35 USC 112, first paragraph, because only a small degree of movement (as depicted in corrected Figure 4) is required. The examiner disagrees. Figures 2 and 3 show a handle bar position that is virtually in contact with the windshield. This position does not allow actual steering of the vehicle.

Applicant also indicates that only one embodiment of steering device need be enabled and, even if the handle bar version is not enabled, the yoke configuration is. The examiner disagrees. A yoke configuration is not depicted in the drawings or discussed in any detail (other than a simple mention of its possible use) in the disclosure. Also, even a yoke would require some forward movement to control drive and directional control. The embodiment shown allows essentially no such forward movement. Also, the steering position is a critical aspect of applicant's invention. That is the what allows the rider to assume the position which is the essence of applicant's invention. Therefore, the steering device position must be depicted in a way that allows one of ordinary skill in the art to make and use the invention. That is not presently the case.

Applicant argues that claiming the snowmobile in relation to how the standard rider is positioned on it in a standard position is definite and defines over the prior art. The examiner disagrees. The examiner maintains that a rider, a human being, cannot be standardized, no matter

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how many dimensions are specified, because more factors go into the definition of a rider and the position he would assume on a vehicle than simply his outer dimensions.

Even if a standard rider could be defined, the examiner does not believe that applicant has provided every dimension required to define such a rider. It is not clear how agile or flexible the standard rider would be. Age would also factor in his description.

Applicant indicates that the agility and age of the standard rider is will not affect where the center of gravity is located assuming the rider is located in the standard position. However, the examiner maintains that the standard position is determined by the physical requirements of the rider when he is positioned on the vehicle (as described in applicant's disclosure on pages 8 and 9). As understood, very aspect of the rider (his various measurements, weight, posture etc.) and vehicle (including its dimensions and even the resilience of the seat cushion) determine the standard position of the rider. Therefore, the examiner maintains that not every required feature of the rider has been disclosed.

The examiner does not see how exactly the dimensions provided with respect to the rider would be projected onto the vehicle, particularly since the dimensions of the vehicle have been omitted. This difficulty is further compounded by the fact that the position of the steering handlebar and windshield depicted in the drawings is not operational. The handlebar position and windshield configuration are clearly important aspects of applicant's invention. The handlebar position, in particular has been recited in every claim. However, the handlebar position shown is not operative. In order to determine what dimensions of the vehicle are encompassed by the

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disclosure and claims, one must take the dimensions of the standard person project and them onto the vehicle depicted in the drawings following the description in the specification. However, since the drawings show a vehicle which is inoperable, and a standard rider could assume positions other than those specifically shown in the drawings Therefore, the examiner is not able to determine the metes and bounds of the claimed snowmobile. Therefore, the rejections based on 35 USC 112, second paragraph are being maintained.

Although applicant has described the relationship between the standard rider and the snowmobile in functional terms, the rider is necessary to the definition of the vehicle. Because the rider is necessary to define the invention, the examiner maintains the rider is part of the claimed invention. None of the cases cited indicate that it is proper or permissible to define a claimed apparatus by the position of a rider on it. Therefore, the rejection based on 35 USC 101 is being maintained.

The claims are also rejected under 35 USC 112, first paragraph because the examiner believes that applicant's modification of the steering member position to a location up against the steering wheel is inoperative. Steering is a required function of a snowmobile. Applicants also indicate that this snowmobile is steerable. Also, the steering handle position is a critical element of applicant's claimed invention. Applicant's Figure 3 demonstrates that a main difference between the prior art and the present invention is the forward shift of the steering member position. That is the change that allows the rider to assume the standard position claimed. However, the

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position of the steering member shown does not allow the vehicle to be steered. Therefore, the vehicle is believed to be inoperative as disclosed.

The examiner maintains that Yasui, Trautwein, and Marier meet the claim limitations, as best understood.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Boehler number is (703) 308-0422

boehler
January 14, 2002

amb 1/18/02
ANNE MARIE BOEHLER
Primary Examiner